

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
-----X

4 DINO ANTOLINI,

Plaintiff,

5 -against-

Case No.:

6 1:19-CV-09038

7 AMY MCCLOSKEY, THERESA LAURENT, DIMUR
8 ENTERPRISES INC., EDDIE C K CHUNG
9 and C&S MILLENIUM REAL ESTATE LLC,

Defendants.
-----X

10 Zoom videoconference

11
12 February 17, 2021
13 1:34 p.m.

14 DEPOSITION of AMY McCLOSKEY, a Defendant
15 herein, taken by the Plaintiff, pursuant to
16 Order, held at the above-mentioned time and
17 place, before Stephanie O'Keefe, a Notary Public
18 of the State of New York.

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20 LH REPORTING SERVICES, INC.
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A P P E A R A N C E S :

FINKELSTEIN LAW GROUP, PLLC
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BY: JASON MIZRAHI, ESQ.

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing, sealing and certification be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed and sworn to before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

1
2 THE REPORTER: My name is
3 Stephanie O'Keefe. I am your court
4 reporter today. I represent LH
5 Reporting Services.

6 Today is February 17, 2021. The
7 time is 1:34 p.m. We are here to take
8 the deposition of Amy McCloskey.

9 Before I swear in the witness, I
10 will ask each counsel to stipulate, on
11 the record, to the following:

12 Due to the COVID-19 pandemic, the
13 court reporter may swear in the witness
14 even though we are not physically in
15 the same location.

16 Each counsel shall also stipulate
17 that there is no objection to this at
18 the present time, and there will be no
19 objection to the same at any time in
20 the future.

21 MR. MIZRAHI: Counsel for the
22 defendant, no objection.

23 MR. FINKELSTEIN: So stipulated.

24 MR. MIZRAHI: We stipulate.

25 THE REPORTER: Counsel, can you

1
2 represent that, to the best of your
3 knowledge and belief, the witness
4 appearing today via videoconference is,
5 in fact, Amy McCloskey?

6 MR. MIZRAHI: I do.

7 THE REPORTER: Thank you.

8 A M Y M C C L O S K E Y, after having first
9 been duly sworn by a Notary Public of the
10 State of New York, was examined and
11 testified as follows:

12 THE REPORTER: Please state your
13 name for the record.

14 THE WITNESS: Amy McCloskey.

15 THE REPORTER: Please state your
16 address for the record.

17 THE WITNESS: 167 Nelson Street,
18 Brooklyn, New York 11231.

19 EXAMINATION BY

20 MR. FINKELSTEIN:

21 MR. MIZRAHI: Jason Mizrahi from
22 Leven-Epstein & Associates, PC would
23 like to make one quick clarification
24 for the record.

25 The instant deposition will be

1 A. McCLOSKEY

2 taken from Amy McCloskey in her
3 personal capacity as well as in her
4 official capacity as a representative
5 of defendant Dimur Enterprises, Inc.

6 MR. FINKELSTEIN: Good afternoon,
7 Ms. McCloskey.

8 How are you?

9 THE WITNESS: Just dandy. Thanks.

10 MR. FINKELSTEIN: You're welcome.

11 I'm going to be asking you a
12 series -- my name is Stuart
13 Finkelstein. I'm going to be asking
14 you a series of questions about this
15 lawsuit.

16 If you don't understand anything
17 that I'm asking you, please let me
18 know. I'll do my best to rephrase it.

19 If I go too fast for you, let me
20 know because I've been accused
21 sometimes of going very quickly.

22 With regard to any objections made
23 by your lawyer here, he is allowed to
24 make whatever objections he wants. But
25 the judge has directed that all

1 A. McCLOSKEY

2 questions are to be answered.

3 And obviously, everything here is
4 to the best of your knowledge.

5 Are we good on that? Do you
6 understand what I'm saying?

7 THE WITNESS: Yes.

8 Q. Okay. Good.

9 Your home address is what, Ms.
10 McCloskey?

11 A. 167 Nelson Street, Brooklyn, New
12 York.

13 Q. Okay. Have you ever been
14 convicted of a crime?

15 A. No.

16 Q. Have you ever testified before --

17 A. No.

18 Q. -- at a deposition like this or in
19 person? No?

20 A. No.

21 Q. How about at trial?

22 A. No. Nope.

23 Q. Date of birth, please.

24 A. August 5, 1961.

25 Q. The last four numbers of your

1 A. McCLOSKEY

2 Social Security number?

3 MR. MIZRAHI: Objection to the
4 form of the question. It's irrelevant.

5 Ms. McCloskey, you can answer.

6 A. 9143.

7 MR. FINKELSTEIN: So in the
8 future, so we know and so he doesn't
9 clutter up the record. Again, he is
10 allowed to make whatever objection he
11 wants, objection to form, this, that,
12 or anything else. But you have to
13 answer all the questions.

14 So for him to say you can answer
15 is gratuitous. So I would appreciate
16 it if he can be constrained on that.

17 So, yes, answer everything unless
18 he outright says don't answer. And
19 then we just go to the judge for a
20 ruling.

21 All right, Ms. McCloskey?

22 THE WITNESS: Yep.

23 Q. Great. Social, you gave me the
24 last four numbers.

25 Did you review any paperwork,

1 A. McCLOSKEY

2 documents, anything, e-mails, letters in
3 preparation for this morning's -- excuse me,
4 this afternoon's deposition?

5 A. I had a vague reading of the
6 complaint a while ago, but nothing else. No

7 Q. When you say a while ago, how long
8 ago?

9 A. A week or two.

10 Q. Anything yesterday, today?

11 A. No.

12 Q. Did you speak with your attorney
13 Mr. Mizrahi, also on the screen, or anybody
14 else at the law firm he works for in regard
15 to this morning's -- this afternoon's
16 deposition?

17 A. Yes.

18 Q. When?

19 A. Yesterday.

20 Q. Who did you speak with?

21 A. Jason.

22 Q. How long did the conversation go
23 for?

24 A. About -- my part of it, probably
25 about 30, 40 minutes. Forty. Somewhere

1 A. McCLOSKEY

2 around there.

3 Q. That was by telephone or by video?

4 A. Zoom.

5 Q. Zoom.

6 Did he show you any papers or
7 documents on Zoom yesterday?

8 A. There were a couple of excerpts
9 from the complaint. That's it.

10 Q. Which excerpts?

11 MR. MIZRAHI: Objection to the
12 form of the question. It calls for
13 privileged attorney-client information.

14 Ms. McCloskey, don't answer that
15 question.

16 Q. After he showed you those
17 excerpts, what did you -- never mind.
18 Withdrawn.

19 Ms. McCloskey, what is your
20 relationship to the property at 94 West
21 Houston Street, New York City?

22 A. I am the president of Dimur
23 Enterprises Inc. And Dimur Enterprises Inc
24 has access to that property for the use of
25 Madame X.

1 A. McCLOSKEY

2 Q. What do you mean by has access? I
3 don't know what you mean by that.

4 A. We are allowed to use it by the
5 landlord.

6 Q. You have a lease?

7 A. Yes.

8 Q. How long have you been operating
9 Madame X at that location?

10 MR. MIZRAHI: Objection to the
11 form of the question. It calls for a
12 legal conclusion.

13 MR. FINKELSTEIN: Go ahead. Ms.
14 McCloskey, go ahead.

15 A. We have been there since 1997.

16 Q. Who was the owner or owners in
17 1997?

18 MR. MIZRAHI: Objection to the
19 form of the question. It's vague and
20 ambiguous.

21 Amy, you can respond.

22 A. Again, Dimur Enterprises had three
23 participants at that point. Theresa
24 Laurent, myself, and our third partner, Mimi
25 Dimur, who has since passed away.

1 A. McCLOSKEY

2 Q. Ms. McCloskey, in 1997, when you
3 began business -- operating a business there
4 as Madame X, who were the owners of the
5 building?

6 A. That would Eddie Chung, and I
7 don't know his partner's name.

8 It would be, actually, C&S
9 Millennium Real Estate. I call him Eddie,
10 but that's -- the name of the business that
11 owns it is C&S Millennium Real Estate, LLC.

12 Q. I'm assuming Eddie Chung is --
13 that's his company, the C&S Millennium Real
14 Estate?

15 MR. MIZRAHI: Objection to the
16 form of the question. It calls for
17 speculation.

18 Q. Do you know? Everything is do you
19 know. Do you know?

20 A. I don't know. I would assume so.

21 Q. All right.

22 MR. MIZRAHI: Amy, I'm going to
23 ask, don't answer any questions under
24 any assumptions. Please only answer
25 questions to the extent you know the --

1 A. McCLOSKEY

2 MR. FINKELSTEIN: Absolutely. Ms.
3 McCloskey, I couldn't agree with him
4 more.

5 Everything here is based on what
6 you know. We don't want you to guess,
7 assume, or believe. If you know the
8 answer, you got to tell me.

9 A. The answer is, I do not know one
10 way or the other.

11 Q. That's a fair answer, and that's
12 perfectly fine. Okay. All right.

13 Probably be the first time I agree
14 with your lawyer.

15 Do you know who the current owners
16 of the building are?

17 A. It still C&S Millennium Real
18 Estate, that's --

19 Q. And Eddie Chung?

20 MR. MIZRAHI: Objection to the
21 form of the question. It calls for
22 witness testimony.

23 It was previously asked and
24 answered.

25 MR. FINKELSTEIN: You can answer

1 A. McCLOSKEY

2 Ms. McCloskey.

3 A. C&S Millennium Real Estate.

4 Q. So you don't know if Eddie Chung
5 is one of the owners of the property or the
6 building?

7 A. He is the person I deal with.
8 That's the only thing I can say that I know
9 for sure.

10 Q. Okay. When you moved in 1997, did
11 you sign the lease?

12 A. Yes.

13 Q. Who are the signatories to that
14 lease?

15 A. Myself, Mimi Dimur. I don't know
16 if Theresa signed. And it's been 23 years,
17 I can't say for sure who else.

18 Q. If I told you Eddie Chung, would
19 that ring a bell?

20 A. Yes. He probably did, but I
21 haven't seen the lease. Again, you don't
22 want me to assume.

23 Q. Right. Do you know if C&S
24 Millennium Real Estate was on that lease?

25 A. Yes.

1 A. McCLOSKEY

2 Q. They're a signatory on the lease,
3 or somebody on their behalf?

4 A. Again, I assume so. I haven't
5 seen it in 23 years.

6 Q. Fair answer. I can't believe you
7 don't remember something from 23 years ago.

8 That's a joke. That's a joke.

9 Do you have a lease in effect
10 right now?

11 MR. MIZRAHI: Objection to the
12 form of the question. It calls for a
13 legal conclusion.

14 MR. FINKELSTEIN: A lease is a
15 lease.

16 Q. Do you have a lease right now
17 between you and the owners of the building?

18 MR. MIZRAHI: Objection, again to
19 the form of the question. It calls for
20 a legal conclusion.

21 MR. FINKELSTEIN: Go ahead, Ms.
22 McCloskey.

23 You got to answer all the
24 questions unless he says, don't answer.

25 In the meantime, can I get an

1 A. McCLOSKEY

2 answer, please? If you know, of
3 course.

4 A. We have a month-to-month.

5 Q. When did that start?

6 A. 2013.

7 Q. Sorry?

8 A. 2013.

9 Q. So you're month-to-month for the
10 last eight years; is that a fair statement?

11 A. That's what it adds up to,
12 approximately.

13 Q. Any reason that you don't have a
14 lease with the landlord, with the owner of
15 the property?

16 MR. MIZRAHI: Objection to the
17 form of the question. It's vague and
18 ambiguous.

19 It also calls for a legal
20 conclusion.

21 MR. FINKELSTEIN: Go ahead, Ms.
22 McCloskey.

23 A. You would have to ask them.

24 Q. Ask them why there is no lease; is
25 that what you said?

1 A. McCLOSKEY

2 A. Yes.

3 Q. Did you want a lease?

4 MR. MIZRAHI: Objection to the
5 form of the question. It's
6 misconstruing witness testimony.

7 Q. Did you want a lease with the
8 owners?

9 MR. MIZRAHI: Objection to the
10 form of the question. Vague.

11 It's also irrelevant.

12 MR. FINKELSTEIN: Go ahead.

13 A. Ask the question again.

14 Q. Would you prefer that there was a
15 lease in place in the last seven, eight
16 years, approximately?

17 MR. MIZRAHI: Objection to the
18 form of the question. It's irrelevant.
19 It also calls for witness
20 testimony.

21 MR. FINKELSTEIN: Counsel, could
22 you do me a favor because I'm having
23 problems hearing the witness and I have
24 to keep the volume up, and you're kind
25 of yelling or talking really loud or

1 A. McCLOSKEY

2 too close to the mic, can you lower it
3 a little bit, please. Thank you.

4 Stephanie, I'm sorry, what was my
5 last --

6 A. I didn't have an opinion. I
7 didn't have an opinion because there were
8 good reasons for it and medium reasons for
9 it. I did not have an opinion.

10 Q. All right. In the past seven,
11 eight years, approximately, were you ever
12 given a 30-day notice to vacate?

13 A. No.

14 Q. Who owns or what owns the lounge
15 slash bar?

16 A. That would be Dimur Enterprise
17 comma Inc?

18 Q. Anybody else? Anybody --

19 A. No.

20 Q. -- or other entity. Sorry, I cut
21 you off. No?

22 A. No.

23 Q. You're president of Dimur
24 Enterprises, correct?

25 A. Yes.

1 A. McCLOSKEY

2 Q. So this is a corporation, correct?

3 A. Correct.

4 Q. Who are the shareholders?

5 A. At this point, myself and Theresa.

6 Q. What percentage of shares do you
7 hold?

8 A. I own 78.

9 Q. And Ms. Laurent?

10 A. Twenty-two.

11 Q. Does she derive any income from
12 Dimur Enterprises?

13 MR. MIZRAHI: Objection to the
14 form of the question. It's irrelevant.
15 It also calls for speculation.

16 MR. FINKELSTEIN: Is that a yes or
17 no, ma'am?

18 A. No.

19 Q. Is she given a dividend, receive
20 any --

21 MR. MIZRAHI: Objection to the
22 form of the question. It's irrelevant.
23 It has no material significance to
24 claims or defenses at issue in this
25 case.

1 A. McCLOSKEY

2 It also calls for speculation.

3 MR. FINKELSTEIN: Do you remember
4 the question after all that?

5 A. The answer is no.

6 Q. Does she work there?

7 A. No.

8 MR. MIZRAHI: Objection to the
9 form of the question. It calls for
10 speculation.

11 Q. On what basis does she get
12 22 percent of the shares?

13 MR. MIZRAHI: Objection to the
14 form of the question. It's irrelevant.

15 It also calls for a legal
16 conclusion.

17 A. Friendship.

18 Q. How long has she had 22 shares?

19 MR. MIZRAHI: Objection to the
20 form of the question. It's irrelevant.

21 It also calls for speculation.

22 A. Since we started.

23 Q. In '97?

24 A. Yes.

25 Q. 1997, Excuse me.?

1 A. McCLOSKEY

2 A. Correct.

3 Q. With regard to Madame X, who makes
4 the -- who's responsible for the management
5 of the lounge bar?

6 MR. MIZRAHI: Objection to the
7 form of the question. It's vague and
8 ambiguous.

9 A. The general day-to-day is my bar
10 manager, Karen.

11 But nobody right now because we're
12 closed.

13 Q. And you're opening up again on
14 March 31st?

15 MR. MIZRAHI: Objection.

16 A. No.

17 MR. MIZRAHI: Objection to the
18 form of the question.

19 Q. When do you plan on reopening?

20 A. Your guess is as good as mine.

21 Q. Okay. Because I thought I read on
22 your website that you're opening up March
23 31st.

24 A. That's on our Yelp page. I have
25 to specify a date.

1 A. McCLOSKEY

2 It keeps getting pushed back.

3 Q. You're aware of the 25 percent
4 opening up by your governor?

5 A. Quite.

6 Q. So you're not gonna open up for
7 that 25 percent?

8 A. No.

9 Q. You said your manager bar person,
10 I think you said that, does the day-to-day
11 operations of Madame X?

12 A. She did.

13 Q. She did.

14 What is her name?

15 A. Karen Kramer.

16 Q. Can you spell that, please?

17 A. Karen spelled the regular way.
18 Kramer, K-R-A-M-E-R.

19 Q. And how do you spell the first
20 name?

21 A. Karen, K-A-R-E-N.

22 Q. What was the last name? You said
23 something about it wasn't spelled the
24 regular way.

25 A. No. Her first name is spelled

1 A. McCLOSKEY

2 Karen, K-A-R-E-N, Kramer, K-R-A-M-E-R.

3 Q. Okay. When was the last time she
4 worked at the lounge?

5 A. March 15, 2020.

6 Q. I'm assuming that's when you
7 closed down.

8 A. Yes.

9 Q. Are you paying rent right now?

10 A. No.

11 MR. MIZRAHI: Objection to the
12 form of the question. It calls for a
13 legal conclusion.

14 Q. What rent were you paying in
15 February --

16 MR. FINKELSTEIN: It's no legal
17 conclusion. It's a fact question.

18 Q. In February 2020, what rent were
19 you paying?

20 MR. MIZRAHI: Objection to the
21 form of the question.

22 MR. FINKELSTEIN: Can you lower
23 your volume?

24 MR. MIZRAHI: It's a conclusory
25 statement.

1 A. McCLOSKEY

2 MR. FINKELSTEIN: Yeah. Great.

3 What's the answer, please?

4 A. The amount that I put on the check
5 every month was \$15,000.

6 Q. That's up until March of 2020?

7 A. Yes.

8 Q. When you say you put on the check,
9 did you also pay in any other way, in cash?

10 A. No.

11 Q. Okay. When was the last time you
12 paid rent there?

13 A. That was the last payment.

14 Q. Do you pay the real estate taxes
15 there or a portion of them?

16 MR. MIZRAHI: Objection to the
17 form of the question.

18 A. That is part of the 15,000.

19 Q. Has he given you a notice since
20 you stopped paying rent to leave, to vacate
21 the premises?

22 MR. MIZRAHI: Objection to form of
23 the question. It's irrelevant. It has
24 nothing to do with the claims or
25 defenses at issue in this litigation.

1 A. McCLOSKEY

2 A. No.

3 Q. Do you have an agreement or have
4 you had any conversations about when you're
5 gonna start paying rent again with the
6 owner?

7 MR. MIZRAHI: Objection to the
8 form of the question. It is
9 irrelevant. It has nothing to do with
10 the claims or defenses at issue in this
11 ADA action.

12 Objection on the basis that it may
13 be requesting privileged and/or
14 otherwise confidential information.

15 Amy, to the extent that it doesn't
16 call for you to disclose any privilege
17 or confidential information, you can
18 answer the question.

19 MR. FINKELSTEIN: Do you remember
20 the question?

21 THE WITNESS: Yes.

22 A. No.

23 Q. Do you have intentions of
24 remaining at that location operating Madame
25 X when this plague is over?

1 A. McCLOSKEY

2 MR. MIZRAHI: Objection. It calls
3 for speculation.

4 A. In this case, I'm agreeing with my
5 lawyer. It totally is up for speculation.
6 Too many variables.

7 Q. Ms. McCloskey, are you familiar
8 with the Americans with Disabilities Act?

9 A. Only generally.

10 Q. Tell me what you mean by
11 generally, please.

12 A. I understand it as a thing. I
13 understand some vague things about it. I
14 have never read it.

15 Q. Okay. What do you understand
16 about it?

17 MR. MIZRAHI: Objection to the
18 form of the question. It's vague and
19 ambiguous.

20 MR. FINKELSTEIN: That's what Ms.
21 McCloskey just said, she has a general
22 and vague knowledge.

23 Q. Tell me what you understand.

24 A. We woke up a country and decided
25 to allow people to be more -- not decided --

1 A. McCLOSKEY

2 said that -- I mean, like I said, it's
3 pretty vague.

4 People with disabilities don't get
5 access to certain places. They needed to
6 make it a rule.

7 Q. When did you learn this?

8 A. No idea.

9 Q. More or less than five years ago?

10 A. You know, it's part of -- it was
11 part of the press.

12 Q. What did you mean by that, part of
13 the press?

14 A. More than five years ago.

15 Q. The law's been out since
16 approximately 1992, 1993. Can you give me a
17 timeframe within that of when you found out
18 about it?

19 A. After that. I didn't pay
20 attention.

21 Q. Okay. Would it be between -- I
22 know the time period you said five years,
23 would it be more than ten years?

24 A. Again, I can't say specifically.
25 I know what you're getting at. It's in

1 A. McCLOSKEY

2 general. It's, you know -- there was an
3 understanding. But if you're asking -- I
4 need a more specific question because I
5 don't -- I don't have an idea. I really
6 honestly don't.

7 Q. You say you heard about the ADA,
8 you knew about approximately the last five
9 year --

10 MR. MIZRAHI: Objection to the
11 form of the question. It is
12 misconstruing witness testimony.

13 MR. FINKELSTEIN: Yeah. Well,
14 let's start from scratch then.

15 Q. When did you first become familiar
16 or hear about the ADA?

17 A. I can't answer that. I don't
18 know. It's something that's generally out
19 there. You become vaguely aware of things.

20 Q. When you say generally out there,
21 how long ago would that be that you
22 generally found out?

23 A. I can't answer that question. I
24 don't like to be specific when I don't have
25 an answer.

1 A. McCLOSKEY

2 Q. That's fine.

3 Did you acquire knowledge of it
4 after 1993?

5 A. Sometime between 1993 and five
6 years ago. Absolutely?

7 Q. Okay. Thank you.

8 Ms. McCloskey, when did you become
9 aware of the lawsuit?

10 A. I don't know specifically. I
11 honestly don't remember.

12 Q. Approximately.

13 A. When we were served and that was,
14 what, couple years ago, a year ago.
15 Somewhere between that.

16 Q. Okay. Did you bring any documents
17 with you or any paperwork or anything
18 related to this lawsuit with you today?

19 A. No.

20 Q. Did your attorney ever show you
21 the notice that was served on him for you to
22 come today?

23 A. No.

24 Q. No.

25 So you're not familiar with the

1 A. McCLOSKEY

2 items that were requested in the notice --
3 your notice of deposition today?

4 A. I know I'm supposed to be here.
5 Anything more than that, I don't -- would
6 not have any specific knowledge.

7 Q. Did anybody tell you not to bring
8 anything with you today related to this
9 lawsuit?

10 A. Nope.

11 Q. Who did you contact after you were
12 served with the lawsuit?

13 A. That was a while ago. I don't
14 recall.

15 Q. Did you call a lawyer?

16 A. Not initially. I think we did
17 research into what it was all about. I
18 don't -- again, it's been a while.

19 Q. What did your research reflect?

20 A. That we were grandfathered and not
21 liable was my estimation.

22 Q. Under what grounds did your
23 research indicate that you were
24 grandfathered?

25 MR. MIZRAHI: Objection to the

1 A. McCLOSKEY

2 form of the question. It calls for a
3 legal conclusion.

4 MR. FINKELSTEIN: It's all based
5 on her research, Counsel.

6 But you can answer the question,
7 ma'am.

8 MR. MIZRAHI: Objection. Renewed
9 objection. It is --

10 A. Can you rephrase?

11 MR. MIZRAHI: -- requesting a
12 legal conclusion.

13 Amy, you can answer.

14 If you need him to --

15 MR. FINKELSTEIN: Relax. She
16 needs the question again.

17 Stephanie, can you please read it
18 back to Ms. McCloskey. Thank you.

19 (Whereupon, the requested portion
20 of the transcript was read back by the
21 reporter.)

22 A. I don't have a memory of the
23 specific. Again, it's very general.

24 Q. And after you did your research,
25 who did you contact, if anybody, regarding

1 A. McCLOSKEY

2 this lawsuit?

3 A. Mostly, we spoke to other people
4 in our business.

5 Q. Okay. Did you tell the owners
6 that everybody was being sued?

7 MR. MIZRAHI: Objection to the
8 form of the question. It's vague and
9 ambiguous.

10 It's also irrelevant. It has no
11 material relevance to the claims or
12 defenses at issue in this litigation.

13 A. I know at some point Eddie reached
14 out to me to ask me; and I told him we were
15 handling it. That was the extent of that.

16 Q. When did Eddie -- I'm assuming
17 you're referring to Eddie Chung?

18 A. Yes.

19 Q. How soon after the lawsuit, you
20 found out about it, did he reach out to you?

21 MR. MIZRAHI: Amy, I'm instructing
22 you not to answer this question. It's
23 completely irrelevant. It has nothing
24 to do with the claims or the defenses
25 at issue in this litigation. This is

1 A. McCLOSKEY
2 unduly unnecessary. It's unduly
3 burdensome. It's designated and
4 targeted to harass you.

5 On that basis, I'm going to ask
6 you not to answer the question.

7 I'm also going to object to the
8 entire line of questioning that is
9 being posed right now.

10 MR. FINKELSTEIN: Mark it for a
11 ruling.

12 Stephanie, I didn't do it on the
13 last one. We're calling Judge Stewart
14 Aaron before the deposition is
15 concluded. I want to get a ruling on
16 this one.

17 What was the question again,
18 please?

19 (Whereupon, the requested portion
20 of the transcript was read back by the
21 reporter.)

22 Q. Did Eddie reach out to you, or you
23 reached out to him?

24 MR. MIZRAHI: Amy, I'm going to
25 object to this line of questioning for

1 A. McCLOSKEY

2 the same reasons that were set forth
3 previously. It's irrelevant. It has
4 no material relevance to the claims of
5 defenses at issue in this litigation.
6 I'm going to object on the basis that
7 it is unduly burdensome. It's designed
8 to harass you.

9 Amy, don't respond to this
10 question.

11 MR. FINKELSTEIN: Mark it for a
12 ruling, please.

13 Q. Was there a discussion between you
14 and Eddie Chung as to who would be
15 responsible for -- strike that.

16 Was there any conversation either
17 by e-mail, phone call, text, anything, any
18 communication as to who would be hiring an
19 attorney to defend owners and Madame X in
20 this lawsuit?

21 A. There was no specific discussion.
22 When we decided to hire a lawyer, we just
23 did so.

24 Q. When did you hire the lawyer?

25 A. I don't recall.

1 A. McCLOSKEY

2 Q. Approximately what year?

3 A. It would have been 2000.

4 Q. In the middle, during the summer

5 --

6 A. I'm sorry. 2020.

7 Q. Would it be the springtime,
8 wintertime, summertime?

9 A. Honestly, I don't recall.

10 Q. Who hired the lawyer?

11 A. Dimur Enterprises.

12 Q. Was that this law firm, Epstein &
13 Associates, including the fellow on video
14 right now?

15 A. Correct.

16 Q. Who paid?

17 A. Dimur Enterprises.

18 Q. And you signed a retainer
19 agreement?

20 A. I'm assuming yes.

21 Q. Did Eddie Chung know that you
22 hired an attorney?

23 MR. MIZRAHI: Objection to the
24 form of the question. It's irrelevant.
25 It also calls for speculation.

1 A. McCLOSKEY

2 MR. FINKELSTEIN: Are you
3 directing her not to answer?

4 MR. MIZRAHI: You can answer.

5 THE WITNESS: I hate to do this,
6 but what was the question again?

7 MR. FINKELSTEIN: It's okay,
8 ma'am.

9 Go ahead, Stephanie, please.

10 (Whereupon, the requested portion
11 of the transcript was read back by the
12 reporter.)

13 MR. MIZRAHI: Objection for the
14 record. It's irrelevant. It has no
15 material --

16 MR. FINKELSTEIN: You just made
17 that objection.

18 MR. MIZRAHI: It has no material
19 relevance to the claims of defenses at
20 issue in this litigation.

21 We're also going to object to this
22 question on the basis that it calls for
23 speculation.

24 A. At some point or another, I spoke
25 with Eddie about hiring a lawyer and that we

1 A. McCLOSKEY

2 would be hiring a lawyer.

3 Q. And that was in 2019 or 2020?

4 A. Honestly, I don't remember.

5 Q. Well, let's go back to when you
6 closed up on March 15, 2020.

7 How soon after that did you and
8 Eddie Chung talk about the lawyer?

9 A. I don't recall. I honestly don't
10 recall.

11 Q. Would it have been -- sorry. Go
12 ahead. Your turn.

13 A. I think we need to accept the fact
14 that 2020 was a complete wash and so it's
15 kind of gone out of my head.

16 We probably would have discussed
17 this in 2019. But again, I am extremely
18 vague. I don't have anything specific to
19 offer you.

20 Q. I hear you about it being a wash.
21 It's a blur. I get you. It's nuts. Let's
22 just say --

23 A. I don't want to be specific
24 because I don't have an answer.

25 Q. You don't have to be exactly

1 A. McCLOSKEY

2 specific. Whoever told you that, it's not
3 true.

4 A. No. No. It's me. I'm literal.

5 Q. Got you.

6 Would you say within six months of
7 getting served with this lawsuit -- six
8 months, within six months of the lawsuit,
9 did you ever talk to Eddie Chung?

10 MR. MIZRAHI: Objection to the
11 form of the question. It's completely
12 irrelevant. It has nothing to do with
13 the claims or defenses at issue in this
14 litigation.

15 We're also going to object to the
16 form of the question to the extent that
17 it calls for speculation.

18 MR. FINKELSTEIN: Answer, please.

19 A. I would say that is probable. I
20 have a timeline in my mind of my
21 conversation.

22 Q. More likely than not, within six
23 months, you spoke to Eddie Chung about the
24 lawsuit?

25 MR. MIZRAHI: Objection to the

1 A. McCLOSKEY

2 form of the question. It misconstrues
3 witness testimony.

4 MR. FINKELSTEIN: She'll answer
5 me, she --

6 MR. MIZRAHI: We're going to also
7 further object to this question on the
8 basis that it's irrelevant. It has no
9 material significance to the claims or
10 the defenses at issue in this ADA
11 litigation. We're also going to object
12 on the basis that it calls for any
13 speculation.

14 A. That sounds likely.

15 Q. What did that conversation
16 involve? What did it entail?

17 A. Eddie is in his 70s. And it
18 probably just consisted of me saying to him
19 I'd handle it.

20 Q. Okay. Did he ever offer to pay
21 legal fees?

22 MR. MIZRAHI: Objection to the
23 form of the question. It's irrelevant.
24 It has nothing to do with the claims or
25 defenses at issue in this ADA

1 A. McCLOSKEY

2 litigation.

3 We're also going to object to this
4 line of questioning on the basis that
5 it calls for any speculation.

6 We're further going to object to
7 the extent that it's intended to harass
8 the witness.

9 MR. FINKELSTEIN: Go ahead, Ms.
10 McCloskey.

11 Do you want the question again?

12 THE WITNESS: Very briefly.

13 MR. FINKELSTEIN: Stephanie, could
14 you please read it again.

15 (Whereupon, the requested portion
16 of the transcript was read back by the
17 reporter.)

18 MR. MIZRAHI: Objection to the
19 form of the question. It's irrelevant.
20 It has nothing to do with the claims or
21 the defenses at issue in this ADA
22 litigation.

23 We're further going to object on
24 the basis that it calls for
25 speculation.

1 A. McCLOSKEY

2 Lastly, we're going to object on
3 the basis that it is a question that is
4 designed to harass the witness.

5 A. I don't recall any specific
6 conversation. I recall basically telling
7 him I would handle it. I --

8 Q. Did you ever ask him -- I'm sorry.
9 What?

10 A. I just told him I would handle it.

11 Q. Got you.

12 A. I told him not to worry about it,
13 that I would handle it.

14 Q. Did you ever ask him to share in
15 the legal fees, to pay some money?

16 MR. MIZRAHI: Objection to the
17 form of the question.

18 A. No.

19 MR. MIZRAHI: It's irrelevant. It
20 has nothing to do with the claims or
21 defenses at issue in this ADA
22 litigation.

23 We're also going to object to the
24 form of the question to the extent it
25 calls for any speculation.

1 A. McCLOSKEY

2 MR. FINKELSTEIN: Anything else?

3 THE WITNESS: My answer was no.

4 MR. FINKELSTEIN: I was talking to
5 him. I thought maybe he wanted to keep
6 going. Thank you anyway, Ms.
7 McCloskey.

8 Q. Where did the conversation take
9 place that you had with Eddie Chung within
10 six months of the lawsuit of you telling him
11 you would take care of it?

12 MR. MIZRAHI: Objection to the
13 form --

14 MR. FINKELSTEIN: Let him make his
15 objection and you can answer.

16 MR. MIZRAHI: Objection to the
17 form of the question. It misconstrues
18 the witness' prior testimony.

19 A. To the best of my recollection,
20 this happened -- it might have been a brief
21 phone call. It might have been an e-mail.
22 It might have been a text message. We
23 communicate in a variety of ways. I don't
24 recall specifically, but it was very brief.
25 I do not engage him in a lot of

1 A. McCLOSKEY

2 conversation.

3 Q. Did he ever tell you that he was
4 served with a lawsuit as well?

5 MR. MIZRAHI: Objection to the
6 form of the question. It calls for
7 speculation.

8 We're further going to be
9 objecting to this question on the basis
10 that it's irrelevant. It has nothing
11 to do with the claims or defenses at
12 issue.

13 Lastly, we're going to be
14 objecting to this question on the basis
15 of hearsay. It calls for out-of-court
16 statement.

17 THE WITNESS: You're gonna have to
18 read that one back again.

19 (Whereupon, the requested portion
20 of the transcript was read back by the
21 reporter.)

22 A. I do not recall if he said
23 anything to me. I was aware -- if my memory
24 is correct, I was aware that his -- that
25 when we got paperwork, that C&S Millennium

1 A. McCLOSKEY

2 Real Estate was on the paperwork. So that
3 would have given me a clue.

4 Q. Would have given you a clue as to
5 what? You lost me.

6 A. That he was on it. That C&S
7 Millennium Real Estate was named.

8 MR. FINKELSTEIN: Okay. Can you
9 please read back my question.

10 (Whereupon, the requested portion
11 of the transcript was read back by the
12 reporter.)

13 MR. MIZRAHI: Objection to the
14 form of the question. We're going to
15 renew the previous objection.

16 A. He did not specifically mention to
17 my recollection.

18 Q. Do you know how he found out about
19 the lawsuit?

20 A. I don't know personally. No.

21 Q. Did you tell him about the
22 lawsuit?

23 A. No.

24 Q. When was the last time you had any
25 sort of communication with Eddie Chung, the

1 A. McCLOSKEY

2 owner of the building regarding the lawsuit?

3 MR. MIZRAHI: We're going to be
4 objecting. We're going to renew the
5 previous objection.

6 A. Not in the last six months. So it
7 would have been beyond that. I don't have a
8 specific answer.

9 Q. When you say beyond, it would have
10 been before six months ago; I think that's
11 what you're saying?

12 A. Previous to six months ago.

13 Q. Thank you. All right.

14 A. Is my memory.

15 Q. From the time that you became
16 familiar with the Americans with Disability
17 Act, which I think you said was about 15
18 years ago, up until the time of the lawsuit
19 when you found out about it when you got
20 served, as you said before, was there ever
21 any inspection or evaluation performed at
22 Madame X to determine if it was ADA
23 compliant?

24 A. No.

25 Q. Did anybody tell you not to?

1 A. McCLOSKEY

2 A. No.

3 Q. Did you think the ADA didn't
4 involve your lounge bar?

5 A. That's --

6 MR. MIZRAHI: Objection to the
7 form of the question.

8 Amy, please wait a moment for me
9 to put in my objection.

10 THE WITNESS: Okay.

11 MR. MIZRAHI: Objection to the
12 form of the question. It calls for a
13 legal conclusion.

14 MR. FINKELSTEIN: You can answer.

15 THE WITNESS: Apparently, my
16 short-term memory sucks. I might need
17 to hear that again.

18 MR. FINKELSTEIN: Go ahead,
19 Stephanie.

20 (Whereupon, the requested portion
21 of the transcript was read back by the
22 reporter.)

23 A. I honestly never, rarely if ever,
24 considered it.

25 Q. Do you have any financial interest

1 A. McCLOSKEY

2 in the building itself?

3 A. No.

4 MR. MIZRAHI: Objection to the
5 form of the question.

6 Amy, please wait. Okay?

7 THE WITNESS: I know. I'm sorry.

8 MR. MIZRAHI: It's okay. Please
9 just wait a moment for me to consider
10 putting in an objection.

11 Q. Besides you and Ms. Laurent, does
12 anybody else have any financial involvement
13 with the lounge bar known as Madame X?

14 MR. MIZRAHI: Objection to the
15 form of the question. It's irrelevant.
16 It has nothing to do with the claims or
17 the defenses at issue in this
18 litigation.

19 Amy, you can go ahead and answer.

20 MR. FINKELSTEIN: She knows that.

21 A. No.

22 Q. Do you know if the building is
23 landmarked?

24 MR. MIZRAHI: Objection to the
25 form of the question. It's vague and

1 A. McCLOSKEY

2 ambiguous.

3 MR. FINKELSTEIN: It's pretty
4 simple.

5 But do you know the answer?

6 A. I know the neighborhood is
7 landmarked.

8 Q. How do you know that?

9 A. It was in the newspapers in 2013.

10 Q. Okay. So you know the
11 neighborhood is landmarked, but you're not
12 sure about the building and the restaurant;
13 is that a fair statement?

14 A. Correct.

15 Q. Since you opened the restaurant
16 slash lounge slash bar -- I guess I
17 shouldn't be calling it a restaurant -- was
18 any renovation work done to it?

19 A. Yes.

20 Q. Tell me, tell us, please.

21 MR. MIZRAHI: Objection to the
22 form of the question. It's vague and
23 ambiguous.

24 MR. FINKELSTEIN: Yeah. Go ahead.

25 A. It is pretty vague. I mean, do

1 A. McCLOSKEY

2 you have any specific kind of question? I
3 mean, any place that's been open 23 years,
4 there are gonna be renovations.

5 Q. Whatever you remember as
6 renovations in 23 years is fine by me.

7 A. Okay. I'm going to have to be
8 fairly general. It's -- there's all kinds
9 of little things that you do to a place.

10 Q. Tell me any work done --

11 A. But just to be clear, any
12 renovations that were done 2000 and prior.
13 There have been no renovations post-2000
14 that were of any significance.

15 Q. Is there any reason that 2000
16 stands out in your mind as no renovations of
17 significance after that?

18 A. That's when we last engaged a
19 contractor to do renovations.

20 Q. What kind of renovations did that
21 contractor do?

22 A. That's a darn good question. I
23 would have to check. It was interior
24 renovations. I think we moved a bathroom
25 door from one side to another side. I think

1 A. McCLOSKEY

2 we took out some barriers on our second
3 floor and put up some different walls. I
4 think we added some plumbing to existing
5 plumbing. We put in a separate bar up on
6 the second floor. Things like that.

7 Q. Were any of these renovations done
8 to comply with the Americans with
9 Disabilities Act?

10 MR. MIZRAHI: Objection to the
11 form of the question. It calls for a
12 legal conclusion.

13 It's vague and ambiguous.

14 A. I don't believe so.

15 Q. When you hired the contractor or
16 contractors to do the work that you
17 described, was any mention made by you or
18 him in terms of making the facility --

19 A. This was our second floor. Not
20 particularly accessible to anybody. Again,
21 this is not something that we thought about
22 at that time. It was not part of the
23 popular thinking. So I don't recall
24 anything specific. It might have been
25 brought up by the contractor, but I did not

1 A. McCLOSKEY

2 have anything to do with the day-to-day work
3 at that time.

4 MR. FINKELSTEIN: Move to strike
5 those parts that are not responsive.

6 Q. Is the second floor still not
7 accessible?

8 MR. MIZRAHI: Objection to the
9 form of the question. It calls for a
10 legal conclusion.

11 MR. FINKELSTEIN: Well, she just
12 mentioned that.

13 Hold on a second.

14 Can you read back her answer to
15 that last question.

16 MR. MIZRAHI: Madam Court
17 Reporter, please finish [sic] until I'm
18 done making my objection for the
19 record.

20 MR. FINKELSTEIN: Yes, please do.

21 MR. MIZRAHI: Please also note
22 opposing counsel's interruption, for
23 the record.

24 MR. FINKELSTEIN: Yes, please do.

25 MR. MIZRAHI: We're going to be

1 A. McCLOSKEY

2 objecting to the question on the basis
3 that it calls for a legal conclusion.

4 We're further going to object to
5 this question on the basis that it
6 misconstrues the witness' prior
7 testimony.

8 MR. FINKELSTEIN: Madam Court
9 Reporter, can you please read back the
10 witness' last response to my last
11 question, please. Thank you.

12 (Whereupon, the requested portion
13 of the transcript was read back by the
14 reporter.)

15 Q. The question is: The second
16 floor, is it still not particularly
17 accessible to anybody at the current time,
18 Ms. McCloskey?

19 A. Nothing has changed since we
20 renovated, no.

21 Q. Thank you.

22 To your knowledge, has anybody in
23 a wheelchair ever been in Madame X, in the
24 interior, inside of it?

25 A. Yes.

1 A. McCLOSKEY

2 Q. When?

3 A. I don't know. We have had a
4 number of people who have contacted us about
5 that, and we set it up so we can get them
6 in.

7 If we know that people have that
8 particular disability, we work with them to
9 allow them in.

10 Q. How did you work with them? You
11 say you set it up, what would you do?

12 A. Just, you know, we would have
13 people available there or they would provide
14 people to help bring them in, bring the
15 wheelchair in, and make them comfortable.

16 Q. Would the person, whether it's a
17 lady or a man, would they be in the
18 wheelchair when you have people helping them
19 get access?

20 A. I don't have an answer to that. I
21 don't think I was ever physically personally
22 there when these things happened. I just
23 know we were asked and helped.

24 Q. Once they got in, were they able
25 to use the bathrooms?

1 A. McCLOSKEY

2 A. Yes.

3 Q. How?

4 MR. MIZRAHI: Objection to the
5 form of the question to the extent it
6 calls for speculation.

7 Amy --

8 Q. Do you know how they were able to
9 get access to the bathrooms?

10 A. I did not personally witness this.

11 Q. Okay.

12 A. It's all on the same floor.

13 Q. How many entrances are there to
14 Madame X?

15 A. There's the street entrance, which
16 is eight steps down from street level.
17 There's -- and that's it.

18 Q. So correct me if I'm wrong, you
19 weren't there on the occasion or occasions
20 that folks who were wheelchair-bound would
21 either be carried in by your people at the
22 lounge or by their own people; am I correct?

23 MR. MIZRAHI: Objection to the
24 form of the question to the extent that
25 it misconstrues the witness' prior

1 A. McCLOSKEY

2 testimony.

3 A. I was never personally physically
4 there witnessing this.

5 Q. Do you know how many times folks
6 who were wheelchair-bound came in?

7 A. I do not.

8 Q. Do you know if they needed help to
9 get into the lavatories, the bathrooms?

10 A. I do not.

11 Q. Are you paying legal fees or is an
12 insurance company paying legal fees?

13 MR. MIZRAHI: Objection to the
14 form of the question. It's irrelevant.
15 It has nothing to do with the claims or
16 defenses at issue in this case.

17 I invite opposing counsel to
18 articulate the basis for which he is
19 continuing with this improper line of
20 questioning.

21 It's completely improper. It has
22 no relevance.

23 We're going to instruct the client
24 not to answer this question. It's --

25 Q. Ms. McCloskey --

1 A. McCLOSKEY

2 MR. MIZRAHI: -- designed -- it's
3 designed to harass the witness.

4 MR. FINKELSTEIN: Yeah. For you,
5 sir, I'll articulate nothing.

6 And for you, Ms. McCloskey, I mean
7 no harassment in the least. I'm here
8 just to get information. That's all I
9 want to do.

10 Q. Is there an insurance policy in
11 effect for your restaurant, for your lounge
12 bar?

13 A. Not at present.

14 Q. Did it expire recently?

15 A. We have been closed for almost a
16 year.

17 Q. All right. So when was the last
18 time you had insurance?

19 Let me see if I can do it a better
20 way for you to help your memory.

21 When you were served with the
22 lawsuit, was there an insurance policy in
23 effect?

24 A. Yes.

25 Q. Did that insurance cover you for

1 A. McCLOSKEY

2 ADA lawsuits?

3 MR. MIZRAHI: Objection to the
4 form of the question. It calls for a
5 legal conclusion.

6 A. I have a broker that handles that.

7 Q. Have you ever been in touch with
8 the broker about this lawsuit?

9 A. No.

10 Q. You never asked him if the
11 insurance covered it?

12 A. No.

13 Q. You're paying the legal fees or
14 Dimur Enterprises is; am I correct?

15 A. Dimur Enterprises is, yes.

16 Q. Thank you.

17 You're month-to-month, so is there
18 any understanding between you and the owner
19 of the building that if it's deemed --
20 strike that.

21 Is there any understanding between
22 you and Dimur Enterprises, with the owners
23 of the building, that in the event ADA
24 violations have to be corrected, who will
25 pay for them?

1 A. McCLOSKEY

2 MR. MIZRAHI: Objection to the
3 form of the question. It calls for a
4 legal conclusion.

5 We're further going to be
6 objecting to this question on the basis
7 of any documentary evidence that speaks
8 for itself.

9 A. I honestly don't know how to
10 answer that question.

11 Q. If as a result of this lawsuit
12 it's found that there were violations at
13 Madame X of the ADA, who is going to make
14 the repairs, you, the landlord, or somebody
15 else?

16 MR. MIZRAHI: Objection to the
17 form of the question. It calls for
18 speculation.

19 We're further going to be
20 objecting to form of this question to
21 the extent that it calls for a legal
22 conclusion.

23 A. I plan the cross that bridge if
24 and when I ever get to it.

25 Q. Have you ever had any training

1 A. McCLOSKEY

2 with regards to the Americans with
3 Disabilities Act?

4 MR. MIZRAHI: Objection to the
5 form of the question. It's vague and
6 ambiguous.

7 A. No.

8 Q. Subsequent to this lawsuit or at
9 any time that you found out about this
10 lawsuit up until today's date, have you
11 hired an expert or anyone known as an
12 architect or general contractor or anybody
13 to do an inspection of the facility?

14 A. No.

15 Q. Do you expect to?

16 MR. MIZRAHI: Objection to the
17 form of the question. It calls for
18 speculation.

19 A. I'm going to file that one under
20 I'll cross that bridge if I need to.

21 Q. Okay. If you need to, who would
22 be paying for that expert, you or the
23 owners?

24 MR. MIZRAHI: Objection to the
25 form of this question again. It calls

1 A. McCLOSKEY

2 for speculation.

3 A. Again, it would be Dimur
4 Enterprises.

5 Q. Of which you're president with 78
6 percent of the shares?

7 A. Correct.

8 Q. I don't want to know the content,
9 but have you ever had any discussions with
10 your lawyer or lawyers regarding the various
11 discovery requests that were served on them?

12 If you don't know what I'm talking
13 about, let me know.

14 MR. MIZRAHI: We're going to
15 object to the form of this question.

16 MR. FINKELSTEIN: Hold on a
17 second. I want to know if she knows,
18 so I can follow up.

19 MR. MIZRAHI: We're going to
20 object to the form of this question to
21 the extent that it is probing any
22 confidential or otherwise privileged
23 information.

24 Amy, you can answer the question.
25 But please give me a moment to lodge

1 A. McCLOSKEY

2 any objections in response to this
3 current line of questioning.

4 THE WITNESS: Did you have more
5 you needed to ask Mr. Finkelstein?

6 MR. FINKELSTEIN: No, but thank
7 you.

8 Do you want her to read back the
9 question?

10 THE WITNESS: Yeah. I'm not sure
11 I understood it.

12 MR. FINKELSTEIN: Read it back,
13 please, Stephanie.

14 (Whereupon, the requested portion
15 of the transcript was read back by the
16 reporter.)

17 Q. I'm not trying to find out the
18 content. I don't want to know the content.
19 Yes, it's privileged information.

20 I just want to know if you had any
21 discussion or discussions with your lawyer
22 or lawyers regarding the discovery requests
23 that my office made of you and that were
24 served on your lawyers.

25 I don't want to know the content,

1 A. McCLOSKEY

2 I just want to know --

3 MR. MIZRAHI: We're going to renew
4 the objection to the extent that it is
5 probing any privileged or otherwise
6 confidential information.

7 A. I don't remember specifically.

8 Q. Any conversations, one or ten?

9 MR. MIZRAHI: We're going to renew
10 the same objection.

11 We're going to be objecting on the
12 basis that it's probing any privileged
13 or otherwise confidential information.

14 A. I'm not familiar with the
15 terminology discoveries, so I am not
16 comfortable answering that question.

17 Q. When I say discovery, we requested
18 information, my client requested information
19 of you and the other defendants.

20 As a general rule, the lawyer
21 would go back to -- and those requests were
22 served on your lawyer. As a general rule,
23 your lawyer or anybody's lawyer, would go
24 back to the client and discuss the requests
25 that I made of them.

1 A. McCLOSKEY

2 So that's what my question means
3 when I say discovery.

4 A. I'm sure some of that came up.

5 MR. FINKELSTEIN: Okay.

6 Stephanie, let's go back and read off
7 to me one at time, the rulings.

8 Can you e-mail them to me?

9 THE REPORTER: We can take a break
10 and I can do that. Yes.

11 MR. FINKELSTEIN: Off the record.

12 (Whereupon, a brief recess was
13 taken; after which the proceedings
14 continued as follows.)

15 JUDGE AARON: Good afternoon.

16 This is Magistrate Judge Aaron. This
17 is the matter Antolini against
18 McCloskey 19CV9038. If I could have
19 the partys identify themselves,
20 starting with the plaintiff.

21 MR. FINKELSTEIN: Stuart
22 Finkelstein for Plaintiff Antolini.

23 MR. MIZRAHI: Jason Mizrahi from
24 Leven-Epstein & Associates PC, counsel
25 for Defendants.

1 A. McCLOSKEY

2 JUDGE AARON: We had a call
3 earlier today in connection with a
4 dispute regarding a deposition. My
5 deputy reached out to me and told me
6 there were additional matters that the
7 partys wanted to raise and we arranged
8 this dial-in. So I don't know who
9 wants to speak first.

10 MR. FINKELSTEIN: I do. Your
11 Honor. I requested the Court to get
12 involved.

13 THE COURT: Okay.

14 MR. FINKELSTEIN: Okay. We
15 finished the first deposition. I'm
16 almost ending the second deposition.

17 To refresh your memory, there are
18 five defendants here, two have
19 answered, the two owners of the lounge
20 slash bar. Actually, three, I beg your
21 pardon. Two haven't answered, one
22 was -- regardless, two have not
23 answered, Eddie Chung and C&S
24 Millennium Real Estate LLC.

25 I am deposing one of the bar

1 A. McCLOSKEY

2 owners, the lounge owners, Ms.
3 McCloskey. And I questioned as
4 follows: Did you tell the owner that
5 everybody was being sued?

6 Defense counsel says: Objection
7 to the form of the question, it's vague
8 and ambiguous.

9 It's also irrelevant. It has no
10 material relevance to the claims or
11 defenses at issue in this litigation.

12 So Ms. McCloskey did, in fact,
13 answer. She says, I know at some point
14 Eddie, that's the landlord, reached out
15 to me to ask me and I told him we were
16 handling it comma, that was the extent
17 of that.

18 Question by me: When did Eddie,
19 I'm assuming you're referring to Eddie
20 Chung?

21 Answer, yes.

22 Question: How soon after the
23 lawsuit -- you found out about it, did
24 he reach out to you?

25 He wouldn't let her answer.

1 A. McCLOSKEY

2 Next question: Did Eddie reach
3 out to you or you reached out to him?

4 Both of those, he directed his
5 client not to answer those two
6 questions, Your Honor.

7 JUDGE AARON: Okay. Mr. Mizrahi,
8 in light of my instructions earlier
9 that you're not to instruct the witness
10 not to answer except on privilege
11 grounds, why did you make those
12 instructions not to answer?

13 MR. MIZRAHI: Your Honor, opposing
14 counsel has just given you a limited
15 snapshot of the deposition that had
16 initiated at 1:30 p.m. and has gone on
17 without any interruption through and
18 including 3:00 p.m.

19 As a matter of fact, Ms. McCloskey
20 had answered the question. In addition
21 to answering this question, which we
22 had properly objected on the grounds of
23 relevance, she was also answering many
24 other questions that also had no
25 material relevance to this case. She

1 A. McCLOSKEY

2 had answered them.

3 Those questions that were lodged
4 against her included requests for her
5 full Social Security number, and
6 requests for information concerning
7 communications with my law office that
8 are protected by the attorney-client
9 privilege.

10 So Ms. McCloskey had answered his
11 question. It was repeatedly being
12 reasked of her.

13 The instruction to her to refrain
14 from answering any further was based on
15 an objection that was designed -- a
16 line of questioning that was simply
17 designed to solicit a new response. It
18 was designed to harass the client. I'm
19 sorry, harass the deponent.

20 And to correct a material
21 misrepresentation that was made by my
22 adversary counsel, the codefendants
23 Eddie CK Chung, C&S Millennium Real
24 Estate, LLC have answered the operative
25 complaint in this action. The answer

1 A. McCLOSKEY

2 was filed on January 19, 2021.

3 We're also going to, you know,
4 object to the characterization of the
5 individual defendants as any owners or
6 operators of the commercial premises at
7 issue. It's still unclear why these
8 two individuals were named as
9 defendants to this action. It's
10 abundantly clear that only one --

11 JUDGE AARON: Okay. I'll let you
12 finish your thought.

13 MR. MIZRAHI: Only the operating
14 entity Dimur Enterprises LLC was the
15 leaseholder and operator and owner of
16 the commercial premises.

17 THE COURT: So this call was not
18 an invitation to rehash everything or
19 many things that happened during the
20 course of the deposition. Rather, it
21 was to address what the Court
22 understood were two narrow issues.

23 So it sounds like in answer to my
24 question, my narrow question of why did
25 you instruct not to answer, your

1 A. McCLOSKEY

2 response is that the questions were
3 asked and answered and this was an
4 attempt at harassment by
5 Mr. Finkelstein.

6 Mr. Finkelstein, you are not to
7 ask the same questions over and over
8 and over again. You are not to harass
9 the witness.

10 Having said that, my ruling is
11 that these questions should be put to
12 the witness. She will answer them
13 concisely and that will be that.

14 Is there anything else?

15 MR. FINKELSTEIN: No, Your Honor.

16 MR. MIZRAHI: Nothing further from
17 Defendants, Your Honor.

18 JUDGE AARON: Okay. Thank you.

19 This matter is adjourned.

20 MR. FINKELSTEIN: Thank you.

21 Stephanie, can you read back to
22 me, the first question was, did you
23 tell the owner that everybody was being
24 sued?

25 Can you go back to that and tell

1 A. McCLOSKEY

2 me what was before that a couple of
3 questions, please. Or just one
4 question anyway.

5 (Whereupon, the requested portion
6 of the transcript was read back by the
7 reporter.)

8 Q. So that's the pending question,
9 Ms. McCloskey.

10 Do you want me to ask you again,
11 Ms. McCloskey?

12 A. What specifically are you asking?
13 I'm sorry.

14 Q. Did you tell the owner -- after
15 you did your research on the lawsuit, did
16 you tell the owner that everybody was being
17 sued?

18 MR. MIZRAHI: Objection to the
19 form of the question. It is not
20 relevant.

21 MR. FINKELSTEIN: The judge just
22 ruled on it. Object to the form and I
23 think that --

24 MR. MIZRAHI: Madam Court
25 Reporter, please note my adversary's

1 A. McCLOSKEY

2 interruption, for the record.

3 We're going to object on the basis
4 of relevancy. It has no material
5 relevance to the claims or defenses at
6 issue in this litigation.

7 We're further going to object to
8 this line of questioning on the basis
9 that it was previously asked and
10 answered.

11 Amy, please answer the question.

12 MR. FINKELSTEIN: Hold on one
13 second, Ms. McCloskey, just so the
14 record is clear. Actually, no, I don't
15 care about his verbiage.

16 Yes, you can answer.

17 A. Geez Louise. You think I can hold
18 onto the question long enough.

19 You just want to know --

20 Q. After you did your research --
21 after you were served with the lawsuit and
22 you did your research and spoke to people
23 about the ADA blah, blah, blah, et cetera,
24 et cetera, et cetera, did you tell the owner
25 after that that everybody was being sued?

1 A. McCLOSKEY

2 A. I think he saw -- I'm sorry. I
3 think he saw by the paperwork that he
4 received who was being sued.

5 MR. MIZRAHI: We're going to
6 object to that prior line of
7 questioning on the basis that it calls
8 for speculation.

9 Q. How do you know he saw paperwork?

10 A. Because it -- it created a
11 conversation afterwards. There was -- he --
12 you know, he must have gotten something. I
13 don't know exactly when because I know it
14 wasn't immediate.

15 Q. Forget about exact. Approximately
16 how long after you were served with the
17 lawsuit did you and he have a discussion
18 about it?

19 A. I don't believe we had a
20 discussion. I believe that he might have
21 sent me a text or something like that saying
22 what is this about and --

23 Q. Okay.

24 A. And we did not get into it. As I
25 mentioned, the only back and forth was,

1 A. McCLOSKEY

2 don't worry about it, we'll take care of it.

3 Q. That was within how many months of
4 you finding out -- you being served with
5 this lawsuit?

6 A. I don't have any honest clue the
7 answer to that.

8 Q. How about three months?

9 A. The bar business is busy. There
10 were many other things I was thinking.

11 Q. How about three months, within
12 three months, did you guys have a text
13 conversation?

14 A. I don't know the answer to that.
15 I cannot honestly answer.

16 Q. Was it in the year 2019?

17 A. My guess is yes.

18 Q. I don't want you -- that would be
19 November, December of 2019?

20 A. You're pressing me for an answer I
21 don't have. I'd answer if I knew, but I
22 don't know.

23 Q. Do you still have those text
24 messages between you and Eddie Chung?

25 A. I would have to check. I don't

1 A. McCLOSKEY

2 know offhand.

3 MR. FINKELSTEIN: I ask that a
4 search be made. Get back to your
5 attorney --

6 Are you all right?

7 THE WITNESS: Sorry. I'm grabbing
8 something.

9 MR. FINKELSTEIN: Anyway, I ask
10 that a search be made for those text
11 messages between you and Mr. Chung
12 regarding you telling him -- regarding
13 the lawsuit -- regarding the lawsuit
14 after he was served, after you were
15 served.

16 Q. How long would you need to take to
17 find those text messages?

18 MR. MIZRAHI: Objection to the
19 form of this question. It calls for
20 speculation. It's improper.

21 Q. I don't want you to speculate.
22 How long do you think it would take?

23 A. Few days.

24 MR. FINKELSTEIN: I'm going to ask
25 that we put that on the record as part

1 A. McCLOSKEY

2 of my demands and I hope to hear back
3 from Counsel --

4 THE WITNESS: Again, I don't know
5 for sure what form of correspondence it
6 was, whether it was a phone call, text,
7 or e-mail. It's been a while.

8 MR. FINKELSTEIN: As long as you
9 tell me it was in the latter part of
10 2019. I got that. If you can check
11 your texts and e-mails, I ask that a
12 search be made and notify your lawyer
13 either way.

14 Q. You said you can do that within a
15 week?

16 A. Within, yes.

17 Q. That's fair.

18 How soon after the lawsuit, after
19 you found out about it, did Eddie Chung
20 reach out to you?

21 A. I don't recall.

22 Q. Was it within weeks or months?

23 A. I do not recall. I'm not --

24 Q. Okay.

25 A. We don't converse very much.

1 A. McCLOSKEY

2 Q. Did he send you the documentation
3 that indicated to him that there was a
4 lawsuit?

5 THE WITNESS: I'm sorry. Repeat
6 that.

7 MR. FINKELSTEIN: Repeat that
8 back, Stephanie.

9 (Whereupon, the requested portion
10 of the transcript was read back by the
11 reporter.)

12 A. No. He didn't send me any
13 documentation.

14 Q. But he referred to it either in a
15 text, e-mail, or phone call; is that a fair
16 statement?

17 A. Yes.

18 Q. Thank you.

19 Do you have any recollection of
20 when this lawsuit was -- strike that.

21 Do you know when this lawsuit was
22 served upon you?

23 A. I don't remember specifically.
24 I'm sure it was -- based on the fact that
25 2020 is a blur, it would have been most

1 A. McCLOSKEY

2 likely 2019, but I don't recall
3 specifically.

4 Q. Just to help refresh your memory,
5 when you had this conversation either by
6 e-mail, text, or phone call with Mr. Chung,
7 was the restaurant open or closed at that
8 time?

9 A. You mean because of COVID. It was
10 before COVID.

11 Q. That you had a conversation with
12 him by either e-mail, phone call, or text,
13 correct?

14 A. Yes, I believe so.

15 Q. Okay. That's fine by me.

16 MR. FINKELSTEIN: Subject to me
17 receiving these documents that I call
18 for the production of, I'm reserving my
19 rights to redepose Ms. McCloskey.

20 Ms. McCloskey, best of luck to
21 you, good health. Thank you for your
22 time.

23 Thanks, Stephanie.

24 (TIME NOTED: 3:18 p.m.)

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A C K N O W L E D G M E N T

I, AMY MCCLOSKEY, do solemnly swear under the penalty of perjury that I have read the foregoing deposition transcript, which was taken under oath reflecting the questions elicited from me and my answers thereto.

This transcript is true and complete. If I deemed it necessary, I indicated additions, changes or corrections on the attached errata sheet.

AMY MCCLOSKEY

Subscribed and sworn to before me
this ___ day of _____ 2021.

Notary Public

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-----I N D E X-----

WITNESS	EXAMINATION BY	PAGE
AMY McCLOSKEY	MR. FINKELSTEIN	5

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-----REQUESTS-----

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 Chung regarding the lawsuit

C E R T I F I C A T E

STATE OF NEW YORK)

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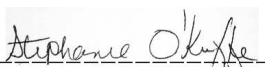
COUNTY OF SUFFOLK)

I, Stephanie O'Keefe, a Notary Public
within and for the State of New York, do hereby
certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and that
such an examination is a true record of the
testimony given by such witness.

I further certify that I am not related to
any of these parties to this action by blood or
marriage, and that I am not in any way interested
in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand on this 17th day of February, 2021.


Stephanie O'Keefe

ERRATA SHEET FOR THE TRANSCRIPT OF:
CASE NAME: ANTOLINI V MCCLOSKEY
DEPOSITION DATE: February 23, 2021
WITNESS: AMY MCCLOSKEY
PLACE: Zoom Videoconference

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AMY MCCLOSKEY

Signed and subscribed to before me,
This ___day of_____, 20__.

Notary Public, State of New York

<p>\$15000 24:5</p> <p>& 2:7 5:22 35:12 63:24 (4)</p> <p>'97 20:23</p> <p>119cv09038 1:6</p> <p>17th 80:20</p> <p>19cv9038 63:18</p> <p>30day 18:12</p> <p>31st 21:14,23</p> <p>70s 39:17</p> <p>[sic] 51:17</p> <p>aaron 33:14 63:15,16 64:2 66:7 68:11 69:18 (7)</p> <p>able 53:24 54:8</p> <p>about 6:14 7:21 9:24,25 22:23 25:4 26:13,16 27:18 28:7,8,16 30:17 32:20 36:25 37:8,20 38:23 41:12 44:18,21 45:17,19 48:12 50:21 53:4 57:8 59:9 60:13 65:23 71:15,23 72:15,18,22 73:2,8,11 75:19 (39)</p> <p>abovementioned 1:16</p> <p>absolutely 13:2 29:6</p> <p>abundantly 68:10</p> <p>accept 37:13</p>	<p>access 10:24 11:2 27:5 53:19 54:9 (5)</p> <p>accessible 50:20 51:7 52:17</p> <p>accused 6:20</p> <p>acquire 29:3</p> <p>act 26:8 45:17 50:9 59:3 (4)</p> <p>action 25:11 67:25 68:9 80:16 (4)</p> <p>actually 12:8 64:20 71:14</p> <p>ada 25:11 28:7,16 39:10,25 40:21 41:21 45:22 46:3 57:2,23 58:13 71:23 (13)</p> <p>added 50:4</p> <p>addition 66:20</p> <p>additional 64:6</p> <p>additions 78:9</p> <p>address 5:16 7:9 68:21</p> <p>adds 16:11</p> <p>adjourned 69:19</p> <p>administer 3:15</p> <p>adversary 67:22</p> <p>adversary's 70:25</p> <p>after 5:8 10:16 20:4 27:19 29:4 30:11 31:24 32:19 37:7 49:17 63:13</p>	<p>65:22 70:14 71:20,21,25 72:16 74:14,14 75:18,18 (21)</p> <p>afternoon 6:6 63:15</p> <p>afternoon's 9:4,15</p> <p>afterwards 72:11</p> <p>again 8:9 11:22 14:21 15:4,18 17:13 21:13 25:5 27:24 30:18 31:16,23 33:17 36:6 37:17 40:11,14 43:18 46:17 50:20 59:25 60:3 69:8 70:10 75:4 (25)</p> <p>against 1:5 63:17 67:4</p> <p>ago 9:6,7,8 15:7 27:9,14 28:21 29:6,14,14 30:13 45:10,12,18 (14)</p> <p>agree 13:3,13</p> <p>agreed 3:4,9,13</p> <p>agreeing 26:4</p> <p>agreement 25:3 35:19</p> <p>ahead 11:13,14 15:21 16:21 17:12 36:9 37:12 40:9 46:18 47:19 48:24 (11)</p> <p>allow 26:25 53:9</p> <p>allowed 6:23 8:10 11:4</p> <p>almost 56:15</p>	<p>64:16</p> <p>also 4:16 9:13 16:19 17:11,19 19:15 20:2,15,21 24:9 32:10 33:7 35:25 36:21 38:15 39:6,11 40:3 41:23 51:21 65:9 66:23,24 68:3 (24)</p> <p>am 4:3 10:22 37:17 54:22 57:14 62:15 64:25 80:15,17 (9)</p> <p>ambiguous 11:20 16:18 21:8 26:19 32:9 48:2,23 50:13 59:6 65:8 (10)</p> <p>americans 26:8 45:16 50:8 59:2 (4)</p> <p>amount 24:4</p> <p>amy 1:7,14 4:8 5:5,14 6:2 11:21 12:22 25:15 31:13 32:21 33:24 34:9 46:8 47:6,19 54:7 60:24 71:11 78:3,16 79:4 81:3,20 (24)</p> <p>andor 25:13</p> <p>another 36:24 49:25</p> <p>answer 8:5,13,14,17,18 10:14 12:23,24 13:8,9,11,25 15:6,23,24 16:2 20:5 24:3 25:18 28:17,23,25 31:6,13 32:22 33:6 36:3,4 37:24 38:18 39:4 42:3,15 45:8</p>	<p>46:14 47:19 48:5 51:14 53:20 55:24 58:10 60:24 65:13,21,25 66:5,10,12 67:25 68:23,25 69:12 71:11,16 73:7,14,15,20,21 (59)</p> <p>answered 7:2 13:24 64:19,21,23 66:20 67:2,10,24 69:3 71:10 (11)</p> <p>answering 62:16 66:21,23 67:14 (4)</p> <p>answers 78:7</p> <p>antolini 1:4 63:17,22 81:2 (4)</p> <p>anybody 9:13 18:18,18 30:7 31:25 45:25 47:12 50:20 52:17,22 59:12 (11)</p> <p>anybody's 62:23</p> <p>anyone 59:11</p> <p>anything 6:16 8:12 9:2,10 29:17 30:5,8 34:17 37:18 42:2 43:23 50:24 51:2 69:14 (14)</p> <p>anyway 42:6 70:4 74:9</p> <p>apparently 46:15</p> <p>appearing 5:4</p> <p>appreciate 8:15</p> <p>approximately 16:12 17:16 18:11 27:16 28:8 29:12 35:2 72:15 (8)</p>
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